

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS DERRICO,  
a/k/a CURTIS COLEMAN,

Defendant-Appellant.

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UNPUBLISHED

September 25, 1998

No. 201269

Recorder's Court

LC No. 95-011026

Before: MacKenzie, P.J., and Bandstra and Markman, JJ.

PER CURIAM.

Originally charged with first-degree murder, MCL 750.316; MSA 28.548, and assault with intent to murder, MCL 750.83; MSA 28.278, defendant was jury-convicted of the lesser offenses of second-degree murder, MCL 750.317; MSA 28.549, and assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. He appeals as of right from his sentences of twenty-five to fifty years in prison for the second-degree murder conviction and six years, eight months to ten years in prison for the assault with intent to do great bodily harm conviction. The two sentences are to run concurrently. We affirm.

Defendant first argues that the trial court erred in denying his motion for a directed verdict on the first-degree premeditated murder charge. When reviewing a trial court's decision regarding a motion for a directed verdict, this Court views the evidence presented up to the time the motion was made in the light most favorable to the prosecution to determine if a rational factfinder could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Peebles*, 216 Mich App 661, 664; 550 NW2d 589 (1996). To prove first-degree premeditated murder, the prosecution must establish that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). Defendant contends that there was insufficient evidence of premeditation and deliberation to justify submitting the first-degree murder charge to the jury. Premeditation and deliberation require sufficient time to allow the defendant to take a "second look," and may be inferred from circumstances surrounding the killing. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995).

Here, the evidence established that defendant and Al Martin, the murder victim, argued on a porch when defendant pushed Martin into some bushes. Defendant then went inside the home, retrieved a knife, went back outside with the knife, fought with Martin, and stabbed him three times. Defendant then stabbed Martin's companion, seriously injuring her. A wound to Martin's abdomen was 4-1/4 inches in length and struck his stomach, liver, diaphragm, and heart. A wound to the back of Martin's arm was characterized as a defense wound, suggesting that Martin tried to put up his arms to defend himself from defendant. This evidence, viewed in a light most favorable to the prosecution, was sufficient to establish the elements of first-degree premeditated murder. Furthermore, even if the trial court erred in denying the motion for directed verdict, the error was harmless. *People v Graves*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 110296, decided 7/30/98).

Defendant also argues that his sentence for the second-degree murder conviction is disproportionate. We disagree. Defendant's sentence is within the sentencing guidelines' recommended minimum sentence range and therefore is presumptively proportionate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). Defendant has failed to present any unusual circumstances that would overcome that presumption. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Accordingly, defendant is not entitled to resentencing.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Richard A. Bandstra

/s/ Stephen J. Markman